

### **REMARKS**

Allowability of claims 24-26, 28-29, 32, 34, 37-41, 43-44, 47, 53, 59-64, 70, and 73-100 has been withdrawn. Claims 60-62 and 70 have been canceled without prejudice. New claims 102-105 have been added. Claims 24-26, 28, 29, 32, 34, 37-41, 43, 44, 47, 53, 59, 63, 64, and 73-105 are now in this case. Claim amendments are discussed below.

#### Claim Amendments

Claim 53 has been rewritten in independent form and incorporates the subject matter of claims 54 and 101. Claims 54 and 101 depend from claim 53.

Claims 60-62 and 70 have been canceled without prejudice to better claim that which the inventors consider to be their invention.

New claims 102-104 which depend, respectively, from claims 53, 54 and 101 have been added. These claims are supported in the specification and in claim 91.

New claim 105 has been added which is supported by the protein of SEQ ID NO: 3.

#### Allowable Claims

Claims 54 and 101 are objected to as being dependent upon a rejected base claim, but are said to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the arguments herein it is believed that claim 53 is allowable and that the objection to claims 54 and 101 is overcome.

### The Rejections

Claims 59-64, 70 and 73-100 are rejected under 35 U.S.C. 102(e) as anticipated by Brown et al. US 2003/126646 (USSN 10/195,144, filed July 12, 2002). This reference is alleged to have an effective filing date of July 21, 2001 (It is believed that the Office Action intended to recite that the effective filing date was July 12, 2001). The cited application claims priority to Serial No. 60/305,026 filed Jul. 12, 2001, U.S. Provisional Patent Application Serial No. 60/305,363 filed Jul. 13, 2001, and U.S. Provisional Patent Application Serial No. 60/308,736 filed Jul. 30, 2001. Claims 60-62 and 70 have been canceled. Applicants respectfully traverse this rejection with respect to the remaining claims.

The Office Action states: "Brown et al. teach the instantly claimed subject matter (see, e.g., pages 1-4 and pages 16-23; claim 1-50, wherein SEQ ID NO: 88 is the restorer protein encoded by "Gene 26" namely SEQ ID NO: 89.)" The Office Action indicates that SEQ ID NO: 88 is 99.2% homologous to instantly claimed SEQ ID NO: 3. The Office Action also states that Brown et al. teach a cDNA clone encoding this protein with 99.0% similarity to instant SEQ ID NO: 2 and a genomic clone encoding this protein, with at least 99.7% homology to SEQ ID NO: 1.

With respect to the effective date of US 2003/126646 (USSN 10/195,144) for SEQ ID NO: 88, this peptide sequence (which has 707 amino acids) does not appear to be included in any of the Provisional applications 60/305,026 filed Jul. 12, 2001, 60/305,363 filed Jul. 13, 2001, or 60/308,736 filed Jul. 30, 2001. The '026 application has a sequence listing indicating 41 peptides, only peptide 16 has 707 amino acids and the sequence of peptide 16 does not appear to be identical to SEQ ID NO: 88. The '363 application contains three peptide sequences none of which is identical to SEQ ID NO: 88. The '736 application has a sequence listing indicating 43 peptides of which none other than peptide

16 (above) has 707 amino acids. Applicants have not undertaken laborious sequence comparisons of the multiple peptide sequences of the priority applications because of the facial dissimilarity of the peptides therein to that of SEQ ID NO: 88. Thus, the effective date of the US 2003/126646 reference with respect to SEQ ID NO: 88 appears at the earliest to be the filing date of the regular US application, July 12, 2002. Since there is no peptide identical to SEQ ID NO: 88 in the priority documents, it appears that there can also be no coding sequence identical to SEQ ID NO: 89 in any of the priority documents. Thus, the effective date of the US 2003/126646 reference with respect to SEQ ID NO: 89 appears at the earliest to be the filing date of the regular US application, July 12, 2002.

The present application claims priority to US application 10/451,366 which is a 371 National Stage application of PCT JP02/04092 filed April 24, 2002. The U.S. National Stage application has the same disclosure as the PCT application and therefore has an effective filing date of at least April 24, 2002. The U.S. National Stage application contains SEQ ID NO: 3 as well as the proteins of SEQ ID NO: 17, SEQ ID NO: 19 and SEQ ID NO: 21 as well as the consensus sequences of SEQ ID NO: 26-29. Further on page 27, first full paragraph (for example), the US National Stage application discusses nucleic acids having 90%, 95% and 97% homology to nucleic acids encoding the protein of SEQ ID NO: 3.

Claims 59-64, 70 and 73-100 are thus believed to be adequately enabled and described as required under 35 U.S.C. 112 by at least April 24, 2002, which is prior to the effective date of the cited reference with respect to SEQ ID NO: 88 or SEQ ID NO: 89. Thus, the cited reference is not properly cited as prior art against these claims and the rejection should be withdrawn.

Claims 24-26, 28-29, 32, 34, 37-41, 43-44, 47, 53, 59-64, 70 and 731-00 are rejected under 35 U.S.C. 102(e) as anticipated by Brown et al. US 2003/0237112 (USSN 10/345,072, filed Jan. 15, 2003) which is alleged to have an effective filing date of July 12, 2001. The cited application claims priority to US Serial No. 10/195,144, filed Jul. 12, 2002, US Serial No. 60/305,026 filed Jul. 12, 2001, U.S. Serial No. 60/305,363 filed Jul. 13, 2001, and U.S. Serial No. 60/308,736 filed Jul. 30, 2001. Applicants respectfully traverse this rejection.

The Office Action states that Brown et al. teach an isolated DNA encoding a radish fertility restoration protein comprising SEQ ID NO: 179 (formerly SEQ ID NO: 129) encoded by "Gene 26"; which is 100% identical to SEQ ID NO:3. The Office Action also states that the cited reference also teaches "transformants, wherein transformed Brassica or *Brassica napus* plants (including those with low glucosinolate levels) may be crossed to male sterile Brassica plants containing Kosena or Ogura-derived cytoplasm.

With respect to the effective date of US 2003/0237112 for SEQ ID NO: 179, Applicants cannot find a sequence identical to SEQ ID NO: 179 in any of the US patent applications to which the cited application claims priority, thus the effective date of the reference with respect to SEQ ID NO: 179 appears to be the filing date of USSN 10/345,072, Jan. 15, 2003.

The Examiner has asserted (in the Office Action dated Nov. 6, 2006) that SEQ ID NO: 3 is considered first disclosed by Applicants in the foreign priority application filed 29 January 2002. Applicants agree that SEQ ID NO: 3 is disclosed in JP 2002-020083 filed 29 January 2002. Applicants do not, however, agree that the protein of SEQ ID NO: 3 is not adequately disclosed in Applicants' earlier priority documents. However, it is not necessary for Applicants to show that SEQ ID NO: 3 was adequately disclosed earlier than 29 January 2002.

Further, the present application also claims priority to US 371 National Stage application of PCT JP02/04092 filed April 24, 2002. The U.S. National Stage application has the same disclosure as that PCT application and therefore has an effective filing date for all claims of at least April 24, 2002. The U.S. National Stage application contains SEQ ID NO: 3, the related proteins of SEQ ID NO: 17, SEQ ID NO: 19 and SEQ ID NO: 21 as well as the consensus sequences of SEQ ID NO: 26-29. Further on page 27 first full paragraph (for example) the US National Stage application discusses nucleic acids having 90%, 95% and 97% homology to nucleic acids encoding the protein of SEQ ID NO: 3. Claims 24-26, 28-29, 32, 34, 37-41, 43-44, 47, 53, 59-64, 70 and 731-00 are thus believed to be adequately enabled and described as required under 35 U.S.C. 112 by at least Jan. 29, 2002 and at the latest by April 24, 2002, which dates are both prior to the effective date of the cited reference with respect to SEQ ID NO: 179.

US 2003/0237112 with respect to its disclosure of SEQ ID NO: 179, is not properly considered prior art to this application and as such the rejection of claims 24-26, 28-29, 32, 34, 37-41, 43-44, 47, 53, 59, 63, 64 and 73-100.

#### New Claims

The arguments presented above with respect to claims 24-26, 28-29, 32, 34, 37-41, 43-44, 47, 53, 59, 63, 64 and 73-100 apply to the new claims and the new claims should be considered free of the prior art.

#### Translation of the Priority Documents

Foreign priority documents of the present application (in Japanese) have been submitted to the Patent Office. Translations of these documents have not been submitted. The Examiner has not requested translations of the priority documents, suggesting that the translations are not needed for examination. The undersigned does not have translations of the priority documents. If the

Examiner now considers that translations of the priority documents will be needed, the undersigned requests the courtesy of a telephone call to request translations.

Conclusion

In view of the amendment of the claims and the arguments presented, it is believed that all of the remaining claims are patentable and should be allowable. Passage to issuance is respectfully requested. This response is accompanied by a Petition for Extension of Time (Three Months) with appropriate fee.

Respectfully submitted,

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